

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

STEVEN A. NERGER, not individually, but  
solely as assignee for the benefit of creditors of  
CLARK FOODSERVICE, INC. and CLARK  
PRODUCTS, INC.,

Plaintiff,

v.

TUBBY'S SUB SHOPS, INC. d/b/a  
SUBPERIOR DISTRIBUTION SYSTEMS,  
INC.

Defendant.

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Case No. 10-12406

Hon. Patrick J. Duggan

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**AGREED ORDER AND STIPULATION OF DISMISSAL**

All matters in controversy having been fully compromised and settled, the parties hereto, by and through their undersigned counsel, hereby stipulate and agree to the dismissal of the above-referenced matter under the terms set forth in this Order and their settlement agreement (the "Settlement Agreement"), and the Court having reviewed and considered the foregoing and being otherwise sufficiently advised, it is hereby STIPULATED and AGREED UPON by the undersigned parties and ORDERED by the Court that:

1. The claims of Plaintiff, Steven A. Nerger, not individually but solely as assignee for the benefit of creditors (the "Assignee") of Clark Products, Inc. and its affiliated entities (collectively, "Clark") against Tubby's Sub Shops, Inc. d/b/a Subperior Distribution Systems, Inc. ("Tubby's") are hereby dismissed with prejudice, subject only to the Assignee's right to reopen the case for entry of a consent judgment in the event of default by Tubby's under the terms of the Settlement Agreement; and

2. This Court shall retain jurisdiction over this matter in order to enforce the terms of the Settlement Agreement.

s/Patrick J. Duggan  
Patrick J. Duggan  
United States District Judge

Dated: January 28, 2011

I hereby certify that a copy of the foregoing document was served upon counsel of record on January 28, 2011, by electronic and/or ordinary mail.

s/Marilyn Orem  
Case Manager

**STIPULATED AND AGREED TO BY:**

~~STEVEN A. NERGER, SOLELY AS  
ASSIGNEE FOR THE BENEFIT OF  
CREDITORS OF CLARK PRODUCTS, INC.~~

~~TUBBY'S SUB SHOPS, INC.~~

**FREEBORN & PETERS LLP**

By: /s/ Devon J. Eggert

One of His Attorneys

David C. Gustman  
Terrence J. Sheahan

**BELLANCA, BEATTIE AND DELISLE,  
P.C.**

By: /s/ Costanzo Z. Lijoi (with  
permission)

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One of Its Attorneys

Devon J. Eggert  
Attorneys for Plaintiff Steven A. Nerger,  
Solely As Assignee For The Benefit of Creditors  
of Clark Products, Inc. ~~Freeborn & Peters LLP~~  
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——— and

**BARRIS, SOTT, DENN & DRIKER, P.L.L.C**

By:    /s/   Josh J. Moss     
~~Josh J. Moss~~  
Josh J. Moss  
Co-Counsel for Plaintiff ~~Barris, Sott, Denn &  
Draker, P.L.L.C.~~ Steven A. Nerger, Solely As  
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